

1 District Judge James L. Robart  
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11 UNITED STATES DISTRICT COURT FOR THE  
12 WESTERN DISTRICT OF WASHINGTON  
13 AT SEATTLE  
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16 SEA SHEPHERD LEGAL,  
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Plaintiff,

v.

18 DEPARTMENT OF THE INTERIOR,  
19

Defendant.

20 Case No. C18-1387 JLR  
21  
22 STIPULATED MOTION AND  
23 [PROPOSED] ORDER FOR RELIEF  
24 FROM 26(F) CONFERENCE,  
25 INITIAL DISCLOSURES, AND  
JOINT STATUS REPORT

JLR

26 Noted for Consideration:  
27 February 28, 2019

28 Plaintiff SEA SHEPHERD LEGAL filed the above-captioned lawsuit under the  
Freedom of Information Act (“FOIA”) against Defendant U.S. DEPARTMENT OF THE  
INTERIOR, seeking disclosure of certain documents.

On December 26, 2018, this Court granted the parties’ stipulated motion setting  
deadlines for a Rule 26(f) Conference, initial disclosures, and a joint status report. Dkt.  
15. On January 30, 2019, the Court re-set those deadlines following resolution of the  
government shutdown. Dkt. 19. For the reasons stated below, the parties respectfully  
request that the Court vacate those deadlines, and instead allow the parties to submit a  
joint status report within the next 60 days.

The ultimate issue in a FOIA action is whether the agency in question has  
“improperly” withheld agency records. 5 U.S.C. § 552(a)(4)(B); *Kissinger v. Reporters*

1     *Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980). This is typically a question  
2 of law for the Court, rather than a question of fact, and thus, “[s]ummary judgment is the  
3 procedural vehicle by which nearly all FOIA cases are resolved.” *Shannahan v. I.R.S.*,  
4 637 F. Supp. 2d 902, 912 (W.D. Wash. 2009) (quoting *Los Angeles Times Commc’ns,*  
5 *LLC v. Dep’t of Army*, 442 F. Supp. 2d 880, 893 (C.D. Cal. 2006)). The parties agree that  
6 the initial disclosure requirements of Rule 26(a)(1) and the requirements of Rule 26(f),  
7 requiring the parties to prepare a discovery plan, are not appropriate in this case at this  
8 time, as the litigation is unlikely to lead to trial, and very possibly not discovery. That  
9 being said, the Plaintiff reserves the right to request discovery should evidence of bad  
10 faith or other grounds for discovery emerge.

11        Thus far, the parties have worked cooperatively in an attempt to resolve this  
12 litigation without motion practice. The Department has produced responsive documents,  
13 and will continue to do so on a regular basis as they become available. Sea Shepherd  
14 Legal has initiated discussions concerning the timeline for these productions and claimed  
15 exemptions by the Department. The Department has also agreed to produce a formal  
16 determination letter, tailored to Plaintiff's specific FOIA request, in accordance with 5  
17 U.S.C. § 552(a)(6)(A)(i), as well as indices for all claimed exemptions as required by  
18 *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Counsel for the parties have conferred  
19 and intend to continue to work together on these issues. If at any time in the next 60 days  
20 it becomes apparent that resolution between the parties is not feasible, the parties will  
21 submit a joint briefing schedule to the Court.

22 | SO STIPULATED.

23 | Dated this 27th day of February, 2019.

s/ Brett W. Sommermeyer  
BRETT W. SOMMERMEYER, WSBA # 30003

s/ Catherine E. Pruett  
CATHERINE E. PRUETT, WA BAR # 35140

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7                   Attorneys for Plaintiff

8                   **SO STIPULATED.**

9                   Dated this 27th day of February, 2019.

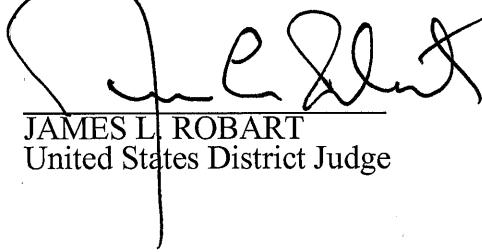
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19                  Attorney for Defendant

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2                   **ORDER**  
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4                   **IT IS SO ORDERED.**  
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6                   Dated this 27 day of February, 2019.  
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9                   JAMES L. ROBART  
10                  United States District Judge  
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